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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1944

No. 1016

UNITED STATES ALKALI EXPORT ASSOCIATION, INC., PITTSBURGH PLATE GLASS COMPANY (INC.), CHURCH & DWIGHT CO., INC., ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

No. 1017

CALIFORNIA ALKALI EXPORT ASSOCIATION, WEST END CHEMICAL CO. (INC.), PACIFIC ALKALI CO., (LTD.), PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

ON WRITTS OF CERTIORARI TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

PETITION FOR CERTIORARI FILED MARCH 5, 1945.

CERTIORARI GRANTED MARCH 5, 1945.

SUPREME COURT OF THE UNITED STATES

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[fol. 1]

IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action File No. 24-464

UNITED STATES OF AMERICA, Plaintiff,

v.

UNITED STATES ALKALI EXPORT ASSOCIATION, INC., CALIFORNIA ALKALI EXPORT ASSOCIATION, Imperial Chemical Industries, Ltd., Imperial Chemical Industries (New York) Ltd., Pittsburgh Plate Glass Company (Inc.), Church & Dwight Co., Inc., Diamond Alkali Company (Inc.), Dow Chemical Company, Inc., Hooker Electrochemical Company (Inc.), The Mathieson Alkali Works, (Inc.), Niagara Alkali Co., Pennsylvania Salt Manufacturing Co., Southern Alkali Corporation, Westvaco Chlorine Products Corporation, Inc., Wyandotte Chemicals Corporation, West End Chemical Co. (Inc.), Pacific Alkali Co. (Ltd.), Defendants

SUMMONS—Filed March 16, 1944

To the above named Defendants:

You are hereby summoned and required to serve upon Herbert A. Berman, Harold L. Schilz and Lawrence S. Apsey, Special Assistants to the Attorney General, plaintiff's attorneys, whose address is Department of Justice, Antitrust Division, 14th Floor, 30 Broad Street, New York 4, N. Y., an answer to the compiaint which is herewith served upon you, within twenty days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

/s/ George J. H. Follmer, Clerk of Court. (Seal of Court.)

Date: March 16, 1944.

[fol. 2] IN UNITED STATES DISTRICT COURT

[Title omitted]

COMPLAINT—Filed March 16, 1944

To the Honorable, the Judges of the District Court of the United States for the Southern District of New York:

The United States of America, seeking equitable relief, by its attorneys, acting under the direction of the Attorney General, files this complaint against the defendants and complains and alleges as follows:

[fol. 3] I. Jurisdiction and Venue

1. This complaint is filed and this action is instituted against the defendants under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the "Sherman Antitrust Act", in order to prevent and restrain continuing violations by defendants, as hereinafter alleged, of Section I of the Sherman Anti-trust Act.

2. The defendants Niagara Alkali Co. and Imperial Chemical Industries (New York) Ltd. are inhabitants of the Southern District of New York, both being incorporated under the laws of the State of New York, the former having its principal offices and place of business at 60 East 42nd Street, Borough of Manhattan, New York City, and the latter having its principal offices and place of business at 521 Fifth Avenue, Borough of Manhattan, New York City; and each of the defendants United States Alkali Export Association, Inc., Pittsburgh Plate Glass Company, (Inc.), Church & Dwight Co., Inc., The Mathieson Alkali Works, (Inc.), Niagara Alkali Co., Pennsylvania Salt Manufacturing Co., Southern Alkali Corporation, Westvaco Chlorine Products Corporation, Inc., and American Potash & Chemical Corporation transacts business and is found within the Southern District of New York.

II. The Defendants

3. The United States Alkali Export Association, Inc., (hereinafter referred to as Alkasso), a corporation organ-[fol. 4] ized under the laws of the State of Delaware and

having its principal offices and place of business at No. 11 Broadway in the Borough of Manhattan, New York, New York, is named a defendant herein.

4. California Alkali Export Association (hereinafter sometimes referred to as Calkex), a corporation organized and existing under the laws of the State of California, having its offices and principal place of business at 530 West Sixth Street, Los Angeles, California, is made a defendant herein.

5. Imperial Chemical Industries, Ltd. (hereinafter sometimes referred to as ICI), a corporation organized and existing under the laws of the United Kingdom, with offices and principal place of business at London, England, is made a defendant herein.

6. Imperial Chemical Industries (New York), Ltd. (hereinafter sometimes referred to as ICI (N.Y.)), a corporation organized and existing under the laws of the State of New York, with offices and principal place of business at 521 Fifth Avenue, New York, New York, is made a defendant herein. The entire capital stock of ICI (N.Y.) is beneficially owned by ICI. ICI (N.Y.) conducts no independent business operations of its own but acts solely and exclusively as agent for ICI for the transaction of business of ICI in the United States. Throughout the period covered by the combination and conspiracy alleged in this complaint, ICI has controlled and directed the policies, management, and activities of ICI (N.Y.). Furthermore, ICI brought about the incorporation of ICI (N.Y.) and has continued its corporate existence solely to transact business of ICI in the United States. [fol. 5] Many of the activities of ICI (N.Y.) have, at the direction of ICI, been in furtherance of the combination and conspiracy herein alleged. In 1935 the then president and general manager of ICI (N.Y.) described that corporation as the "private commercial legation" of ICI, and the manager of ICI (N.Y.) as "ICI's ambassador to North America," and characterized the function of ICI (N.Y.) as "to hold the ICI fort in North America."

7. Pittsburgh Plate Glass Company (Inc.), a corporation organized and existing under the laws of the State of Pennsylvania, having its offices and principal place of business at 30 Rockefeller Plaza, New York, New York, is made a

defendant herein. Said defendant manufactures alkalis in its factories located at Barberton, Ohio.

8. Church & Dwight Co., Inc., a corporation organized and existing under the laws of the State of Delaware, having its offices and principal place of business at 70 Pine Street, New York, New York, is made a defendant herein. Said defendant manufactures alkalis in its factories located at Syracuse, N. Y.

9. Diamond Alkali Company (Inc.), a corporation organized and existing under the laws of the State of Delaware, having its offices and principal place of business at 537 Smithfield Street, Pittsburgh, Pennsylvania, is made a defendant herein. Said defendant manufacturers alkalis in its factories located at Painesville, Ohio.

10. Dow Chemical Company. Inc., a corporation organized and existing under the laws of the State of Michigan, having its offices and principal place of business at Mid- [fol. 6] land, Michigan, is made a defendant herein. Said defendant manufactures alkalis in its factories located at Midland, Michigan; Freeport, Texas; Pittsburgh, California; and Tacoma, Washington.

11. Hooker Electrochemical Company (Inc.) a corporation organized and existing under the laws of the State of New York, having its offices and principal place of business at Buffalo Avenue and 47th Street, Niagara Falls, New York, is made a defendant herein. Said defendant manufactures alkalis in its factories located at Niagara Falls, N. Y. and Tacoma, Washington.

12. The Mathieson Alkali Works (Inc.), a corporation organized and existing under the laws of the State of Virginia, having its offices and principal place of business at 60 E. 42nd Street, New York, New York, is made a defendant herein. Said defendant manufactures alkalis in its factories located at Saltville, Va.; Niagara Falls, N. Y.; and Lake Charles, La.

13. Niagara Alkali Co., a corporation organized and existing under the laws of the State of New York, having its offices and principal place of business at 60 E. 42nd Street, New York, New York, is made a defendant herein. Said defendant manufactures alkalis in its factories located at Niagara Falls, N. Y.

14. Pennsylvania Salt Manufacturing Co., a corporation organized and existing under the laws of the State of Pennsylvania, having its offices and principal place of business at 1000 Widener Bldg., Philadelphia, Pa., is made a defendant herein. Said defendant manufactures alkalis in its factories located at Wyandotte, Mich, and Tacoma, Washington.

[fol. 7] 15. Southern Alkali Corporation, a corporation organized and existing under the laws of the State of Delaware, having its offices and principal place of business at 30 Rockefeller Plaza, New York, New York, is made a defendant herein. Said defendant manufacturers alkalis in its factories located at Corpus Christi, Texas.

16. Westvaco Chlorine Products Corporation, Inc., a corporation organized and existing under the laws of the State of Delaware, having its offices and principal place of business at 405 Lexington Ave., New York, New York, is made a defendant herein. Said defendant manufactures alkalis in its factories located at South Charleston, W. Va.

17. Wyandotte Chemicals Corporation, a corporation organized and existing under the laws of the State of Michigan, having its offices and principal place of business at the Ford Building, Detroit, Michigan, is made a defendant herein. Said defendant manufacturers alkalis in its factories located at Wyandotte, Mich. Said defendant is the corporate successor of Michigan Alkali Co. (Inc.), which was merged with it in 1943.

18. West End Chemical Co. (Inc.), a corporation organized and existing under the laws of the State of California, having its offices and principal place of business at 608 Latham Square Building, Oakland, California, is made a defendant herein. Said defendant manufacturers alkalis in its factories located at Searles Lake and West End, California.

19. Pacific Alkali Co. (Ltd.), a limited partnership organized, duly registered and existing under the laws of the State of California, having its offices and principal place of [fol. 8] business at 1206 Pacific Mutual Building, Los Angeles, California, is made a defendant herein. Said partnership consists of Harvey S. Mudd and Seeley Mudd, as general and limited partners; and the Honnald Foundation, a

trust, and Philip Wiseman as limited partners. Said defendant manufacturers alkalis in its factories at Bartlett, California.

III. The Co-conspirators

20. American Potash & Chemical Corporation, a corporation organized and existing under the laws of the State of Delaware, having its offices and place of business at 70 Pine Street, New York, New York, is not made a defendant herein, but is named as a co-conspirator to the combination and conspiracy alleged in this complaint. In or about 1942 substantially all of the capital stock of the said corporation was seized by Leo T. Crowley, the Alien Property Custodian of the United States, acting in compliance with law under the Acts of Congress and Executive Orders in such cases made and provided. The said Alien Property Custodian has now directed the management of the said corporation to withdraw as a member of Calkex and to terminate all of its obligations under the agreements hereinafter more particularly alleged and set forth entered into by the said corporation with Calkex and the other defendants and co-conspirators herein named.

21. Solvay Process Company, a corporation organized and existing under the laws of the State of New York, having its offices and principal place of business at 61 Broadway, New York, New York, is not made a defendant herein but is named as a co-conspirator to the combination and [fol. 9] conspiracy alleged in this complaint. Solvay Process Company is a wholly owned subsidiary of Allied Chemical & Dye Corporation. Solvay Process Company manufactures alkalis at its factories located in Syracuse, N. Y.; Hopewell, Va.; and Baton Rouge, La.

22. Solvay et Cie (hereinafter called Belgian Solvay), a corporation organized and existing under the laws of the Kingdom of Belgium, having had its offices and principal place of business at Brussels, Belgium, and now having its principal place of business at London, England, is not made a defendant herein but is named as a co-conspirator to the combination and conspiracy alleged in this complaint. Belgian Solvay is the principal manufacturer of alkalis on the Continent of Europe, with factories located in Belgium, France, Germany, and other countries in Europe.

23. I. G. Farbenindustrie Aktiengesellschaft (hereinafter referred to as I. G. Farben), a corporation or assication or-

ganized under the laws of Germany, having its offices and principal place of business at Frankfort-am-Main, Germany, is not made a defendant herein but is named as a co-conspirator to the combination and conspiracy alleged in this complaint. I. G. Farben is the most important manufacturer of alkalis in Germany.

IV. Nature of the Trade and Commerce Involved and Background of the Conspiracy

24. The term "alkalis" includes soda ash (sodium carbonate), caustic soda (sodium hydroxide), and bicarbonate of soda.

[fol. 10] 25. The principal method for manufacture of alkalis is the so-called Solvay ammonia soda process which has been in general use since about 1870. This process is used to produce any or all of the three forms of alkalis above described, in any desired proportion. By this process, salt brine, ammonia gas, and carbon dioxide are treated together to bring about an interaction producing sodium bicarbonate. The resulting sodium bicarbonate may be purified and marketed as such. Most of the sodium bicarbonate so produced is, however, converted into soda ash by the application of heat. In turn the soda ash so produced may be marketed as such or it may be causticized by treatment together with lime to bring about an interaction producing caustic soda.

26. Caustic soda may also be produced directly from salt by an electrolytic process which is utilized in the manufacture of chlorine. In this process, an operation more recently developed than the ammonia soda process, salt brine is subjected to an electric current, and by electrolysis the salt and water are broken down into chlorine appearing at one pole of the electric cell and caustic soda produced in the solution. This process has been practiced to an increasing degree in recent years because of the growth in demand for chlorine, and accordingly increasing quantities of caustic soda have been produced by the electrolytic method.

27. Soda ash is used principally in the manufacture of glass, textiles, and chemicals. Among the important uses of caustic soda are the manufacture of soap, textiles, rayon, and paper, and the refining of petroleum products. Sodium bicarbonate is used for numerous industrial purposes and in many food and drug products. In purified form it is also

[fol. 11] an end product sold at retail as baking soda or for medicinal uses. In the year 1939 approximately 2,900,000 tons of soda ash were produced in this country, as were approximately 1,000,000 tons of caustic soda, and 140,000 tons of refined bicarbonate of soda. On the basis of average prevailing domestic prices for that year the soda ash so produced had a value in excess of $50,000,000, the caustic soda so produced had a value in excess of $40,000,000, and the refined bicarbonate of soda had a value of more than $5,000,000.

28. Each of the domestic companies named as defendants or co-conspirators herein, with the exception of Alkasso, Calkex, and ICI (NY) are engaged in the manufacture and sale of alkalis, with their respective factories located as is hereinabove described. Each of the aforesaid companies sells and ships the greater part of the alkalis manufactured by it to dealers and consumers of alkalis located in States other than those in which the respective factories of such manufacturer are located. All of the aforesaid domestic companies engaged in the manufacture and sale of alkalis conduct substantially all of their export trade in alkalis through Alkasso and Calkex in the manner hereinafter more particularly described.

29. ICI was formed in 1926 by a consolidation of four important British companies: Brunner, Mond & Co., Ltd., United Alkali Co., Ltd., British Dyestuffs Corporation, Ltd., and Nobel Industries, Ltd. Prior to the formation of ICI in 1926, Brunner, Mond & Co., Ltd., and United Alkali Co., Ltd., producers of alkalis in the United Kingdom, entered into agreements with Alkasso as part of the combination and conspiracy herein alleged. Upon the formation of ICI, ICI assumed, adopted, and carried out the agree-[fol. 12] ments made by its said predecessor companies with Alkasso. Whenever the term ICI is herein used in relation to activities and agreements prior to the formation of Imperial Chemical Industries, Ltd. in 1926, such term shall refer to Brunner, Mond & Co., Ltd. and United Alkali Co., Ltd.

30. ICI enjoys a virtual monopoly in the sale of chemicals, including alkalis, in the British Empire. Directly and through its subsidiary and affiliated companies ICI operates plants for the production of alkalis in various coun-

tries of the British Empire, including Great Britain, India, Australia, New Zealand, and the Union of South Africa. ICI also exports large quantities of alkalis produced principally in its factories in Great Britain to various markets of the world.

31. Co-conspirator I. G. Farben, one of the largest chemical companies in the world, with factories located at various cities and towns in Germany, is also engaged in the manufacture of alkalis and in export thereof to various markets of the world.

32. Co-conspirator Belgian Solvay is the most important manufacturer of alkalis in the European continent, with its principal factories located in Belgium, and exports large quantities of alkalis from Belgium to various markets of the world.

33. Alkasso was organized in 1919 as a corporation under the laws of the State of Delaware by Michigan Alkali Company, Inc., Pennsylvania Salt Manufacturing Company, Columbia Chemical Company, Solvay Process Company, and Hooker Electrochemical Company (Inc.). In that year Alkasso filed with the Federal Trade Commission a verified [fol. 13] written statement setting forth the location of its offices and the names and addresses of its officers and stockholders and a copy of its certificate of incorporation and by-laws, in order to obtain for it and for the aforesaid five corporations, as its members, the benefits and immunities provided by Sections 2 and 3 of the Act of Congress of April 10, 1918, c. 50, 40 Stat. 516, commonly known as the Webb Export Trade Act. After the formation of Alkasso the following additional corporations became its members in the following years, respectively:

Corporation	*Year it joined Alkasso*
Diamond Alkali Company (Inc.)	1919
Mathieson Alkali Works, Inc.	1919
Westvaco Chlorine Products Corporation, Inc.	1922
Church & Dwight Co., Inc.	1930
Dow Chemical Company, Inc.	1934
Niagara Alkali Co.	1934
Southern Alkali Co.	1935

34. All of the corporations which have become members of Alkasso have remained members up to the date of the filing of this complaint with the following exceptions: Solvay Process Company withdrew from membership in 1941. In 1920 Pittsburgh Plate Glass Co. (Inc.) acquired Columbia Chemical Company, and the two companies were consolidated. Thereupon, Pittsburgh Plate Glass Co. succeeded Columbia Chemical as a member of Alkasso and has at all times thereafter remained a member, acting as such either in its own name or in the name of Columbia Development Corporation, a corporation wholly owned, directed, [fol. 14] and managed by Pittsburgh Plate Glass Co. (Inc.). In 1943 Michigan Alkali Co., Inc., was merged with Wyandotte Chemicals Corporation, which succeeded Michigan Alkali Co., Inc., as a member of Alkasso.

35. Alkasso has at all times been owned and managed by its said members, each of whom, during membership, has owned shares of stock in it. The Board of Directors of Alkasso has at all times consisted of one officer or representative of each of the member companies. The activities of Alkasso have at all times been controlled, directed, and managed by its members, and each of its members has participated in such control, direction, and management.

36. Alkasso causes most of the alkalis obtained by it from its members or from other companies to be shipped from the respective factories located in various States in the United States to warehouses maintained and operated by Alkasso at Hoboken, New Jersey, and New Orleans, Louisiana from which points Alkasso transports such alkalis by steamship to various markets of the world in which markets it disposes of such alkalis to dealers and consumers located there. Alkasso also sells or permits its members to sell for direct shipment by rail from the plants of members to foreign destinations in Mexico and Canada.

37. Calkex was organized in 1936 as a corporation under the laws of Delaware by American Potash & Chemical Corporation, West End Chemical Co. (Inc.), and Pacific Alkali Co. (Ltd.). In that year Calkex filed with the Federal Trade Commission a verified written statement setting forth the location of its offices and the names and addresses of its [fol. 15] officers and stockholders and a copy of its certificate of incorporation and by-laws, in order to obtain for it

and its members the benefits and immunities provided by Sections 2 and 3 of the statute commonly known as the Webb Export Trade Act referred to above. The said three member companies have remained members of Calkex up to the date of the filing of this complaint.

38. Calkex has at all times been owned and managed by its aforesaid members, each of whom has, since the formation of Calkex, owned shares of its stock. The Board of Directors of Calkex has at all times consisted of a representative of each of the three member companies. The activities of Calkex have at all times been controlled, directed, and managed by its members, and each of its members has participated in such control, direction, and management.

39. Calkex causes most of the alkalis obtained by it from its member companies to be shipped from their respective factories to various ports on the Pacific Coast, Los Angeles, San Diego, and San Francisco, from which points Calkex transports such alkalis by steamship or by rail to various markets of the world.

40. Throughout the period of time covered by the combination and conspiracy alleged in this complaint Alkasso and Calkex, together have exported or controlled the export of most of the alkalis exported from the United States. Prior to 1940 Alkasso and Calkex together exported, either on behalf of their members or other manufacturers of alkalis in the United States, in excess of 95% of the alkalis exported from this country. Due to extraordinary war con-
[fol. 16] ditions and the resignation of Solvay Process Company from membership in Alkasso in 1941, the percentage of alkalis exported by Alkasso and Calkex, either on behalf of their members or others, fell to approximately 75% of the total alkalis exported from the United States. At the time of the resignation of Solvay from Alkasso, all important producers of alkalis in the United States were members either of Alkasso or Calkex, and, except for Solvay, are now members.

V. Violations of Law

41. Beginning in or about 1924 and continuing thereafter up to and including the date of the filing of this complaint, defendants Alkasso and ICI and those defendants who were

members of Alkasso in 1924 have been and now are, and the remaining defendants from the time of their respective admission as members of Alkasso or Calkex, and Calkex, from its formation, have been and now are, and from time to time during said period the co-conspirators have been engaged in an unlawful combination and conspiracy, by the means and methods hereinafter set forth, in restraint of the aforesaid trade and commerce in alkalis among the several States of the United States and with foreign nations, and the defendants and co-conspirators have been and defendants now are parties to contracts, agreements, and understandings in restraint of such trade and commerce, all in violation of Section 1 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, entitled "An Act To protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Antitrust Act. Such combination and conspiracy and such unlawful contracts, agreements, and understand- [fol. 17] ings will continue unless the relief hereinafter prayed for in this complaint is granted. The aforesaid illegal combination and conspiracy has consisted in a continuing agreement and concert of action the terms of which have been as follows:

(a) That Alkasso, Calkex, their respective members, ICI, I. G. Farben, and Belgian Solvay would not compete with each other in the sale of alkalis in any market of the world outside of the United States.

(b) That ICI, I. G. Farben, and Belgian Solvay would refrain from importing alkalis into the United States.

(c) That Alkasso, Calkex, and their respective members would be assigned certain marketing areas as their exclusive territory and that ICI, I. G. Farben, and Belgian Solvay would refrain from exporting alkalis to such territory and would prevent other European manufacturers from exporting alkalis thereto. Included in such agreed exclusive territory given to Alkasso, Calkex, and their respective members was the United States.

(d) That ICI, I. G. Farben, and Belgian Solvay would each be assigned certain market areas as its exclusive, and that Alkasso, Calkex, and their respective members would refrain from exporting alkalis to such territories, and would prevent other American manufacturers and dealers

from exporting alkalis thereto. Included in such agreed exclusive territory given ICI was the British Empire (except Canada); included in such agreed exclusive territory given Belgian Solvay was the Continent of Europe, with [fol. 18] the exception of the countries given to I. G. Farben; included in such agreed exclusive territory given I. G. Farben were the Scandinavian countries.

(e) That the markets of the world not allocated exclusively to Alkasso, Calkex, their respective members, ICI, I. G. Farben, or Belgian Solvay, were to be shared jointly by Alkasso, Calkex, their respective members, and ICI. Such territory to be so shared is sometimes hereinafter referred to as joint territory.

(f) That Alkasso, Calkex, their respective members, and I.C.I. would eliminate competition between each other in the sale of alkalis exported by such companies to joint territory by allocating quotas to the American and British companies respectively, thereby limiting their exports to certain fixed percentages of the total alkalis sold by such companies or to fixed maximum amounts or both, and by agreeing with each other upon the prices at which alkalis were to be sold in such markets.

(g) That Alkasso, Calkex, and their respective members would prevent other manufacturers and dealers in the United States from exporting alkalis from the United States to joint territory unless they complied with the quota arrangements and prices fixed by Alkasso and ICI for such territory, and that Alkasso, Calkex, and their members would prevent such other manufacturers and dealers from exporting alkalis from the United States to territory allocated exclusively to Alkasso, Calkex, and their respective members except at the prices fixed by Alkasso for such territory.

(h) That Alkasso, Calkex, and their respective members would conduct their export trade and utilize the aforesaid [fol. 19] arrangements and their practices thereunder in such manner as to enhance and to stabilize and maintain at uniform and noncompetitive levels the prices at which caustic soda is sold in the United States by manufacturers to dealers and consumers therein.

42. Said unlawful combination and conspiracy has been formed, effectuated, and furthered by divers means and

methods including those hereinafter in Paragraphs 43 through 63 hereof alleged and set forth.

43. Prior to the formation of the combination and conspiracy herein alleged, ICI was engaged in exporting alkalis to the United States, and ICI, Alkasso, and its members competed with each other in the sale of alkalis in this country and in world markets. In or about 1924, ICI agreed with Alkasso that ICI would refrain from exporting alkalis to the United States. This agreement is still in full force and effect. Alkasso and its members agreed to enter into marketing arrangements with ICI to eliminate competition in the sale of alkalis in other markets of the world.

44. Accordingly Alkasso, acting on behalf of itself and its members, entered into an agreement with ICI evidenced by a written memorandum dated February 29, 1924. A copy of such memorandum is attached hereto as a part hereof marked Exhibit A. The agreement provided:

(1) That ICI would refrain from exporting alkalis to Cuba.

(2) That out of the alkalis to be sold by Alkasso, its members, and ICI in Mexico, Alkasso and its members [fol. 20] would be allocated a quota of 60%, and ICI would be allocated the remaining 40% in such market. In the event the total amount of caustic soda and soda ash sold by both the American and British companies exceeded 8,750 tons and 3,750 tons, respectively, the excess would be supplied exclusively by the American companies.

(3) That Alkasso and its members would employ the agent of the British Company in Mexico, Messrs. William Young & Company, to act also as their agent for the distribution of alkalis in Mexico. It was agreed that Messrs. William Young & Company should fix the prices at which alkalis would be sold in such market by Alkasso, its members, and ICI.

(4) That Alkasso would not ship more than 6,500 tons annually of caustic soda and 1,000 tons annually of soda ash to South America. It was further provided that out of this total tonnage, the quantity of alkalis shipped annually to South America should not exceed certain stated amounts for certain specified

countries. ICI agreed to provide a market for the specified tonnage allotted to Alkasso and its members.

(5) That the prices of alkalis sold in South America were to be raised and Alkasso and its members agreed to charge the same price for alkalis sold by them as were charged by ICI.

(6) That all shipments of alkalis to South America made by United States manufacturers not members of Alkasso were to be charged against the quota allotted to [fol. 21] Alkasso and were accordingly to be deducted from the tonnage allocated to it in South American markets.

45. The above mentioned agreement of February 29, 1924, was thereafter modified and supplemented by an agreement made by Alkasso, acting on behalf of itself and its members, and ICI, which agreement was evidenced by a letter written by ICI to Alkasso dated October 22, 1929, a copy of which is attached hereto as a part hereof marked Exhibit B. The said agreement provided:

(1) That the share of United States manufacturers and distributors, including Alkasso and its members, in exports of alkalis to foreign markets should be the following percentages of the total exports of alkalis from the United States and the United Kingdom:

United States Share of World Markets

1930	22½%
1931	24%
1932	25%

(2) That all exports of alkalis by all United States manufacturers should be considered as made under Alkasso's quota.

(3) That there would be complete cooperation between Alkasso and its members and ICI in order to avoid competition in the sale of alkalis in any market of the world, and that in order to prevent competition from other United States manufacturers of alkalis not members of Alkasso, Alkasso would, apart from its assumption of their exports in its quota, take the necessary step to control such manufacturers to bring about stabilization of prices for alkalis.

[fol. 22] (4) That ICI would take measures to assure to Alkasso and its members a market for their exports within the limits of their quota.

(5) That the agreement should run through the end of the year 1932.

46. In the aforesaid letter dated October 22, 1929, ICI advised Alkasso that it would renew the agreement at the end of 1932 only "provided that the recent steady increase in your percentage should not continue thereafter and that, when you have reached 25%, you should be prepared to continue cooperation with us on that basis for a further period of years."

47. In 1933 Alkasso, acting on behalf of itself and its members, and ICI entered into a further agreement evidenced by a written memorandum of meetings held in New York City on May 8th and May 9th, 1933 between representatives of Alkasso, its members and ICI, a copy of which memorandum is attached hereto as a part hereof marked Exhibit C. The agreement evidenced thereby provided:

(1) That Alkasso and its members on the one hand, and ICI on the other, should share in exports of alkalis to the following countries upon the basis of the following percentages of their total exports thereto as their respective quotas, subject to the following limitations on maximum exports:

	Alkasso	*ICI*
Mexico	80%	20% with maximum 5000 T
China	7% with maximum 4000 T	93%
India	3% with maximum 2000 T	97%

[fol. 23] (2) That Alkasso should count in the quota for itself and its members exports of alkalis by other American manufacturers except shipments of natural soda from western ports of the United States, as to which Alkasso expressed the opinion that any such shipments were improbable.

(3) That the respective quotas for total exports by the parties should be on the basis of 25% to Alkasso and 75% to ICI.

(4) That Alkasso and its members and ICI would employ a joint agent to distribute alkalis exported by them to Mexico, that Alkasso would market all alkalis exported by it and its members to China through a subsidiary of ICI in that country, and that Alkasso and its members would market their quota of alkalis in India at prices to be agreed upon between Alkasso's agent and ICI's agent in that country.

(5) That in all other markets Alkasso, its members, and ICI should sell at agreed prices, or, in case of dispute, at the prices determined by the party having the larger interest in the market concerned.

(6) That the parties should exchange complete figures as to shipments and sales of sales of alkalis exported.

(7) That the agreement should be effective from January 1, 1933 to April 30, 1936, and should continue in effect thereafter unless terminated by six months' notice by either party.

48. Prior to 1936 defendant ICI had entered into cartel [fol. 24] arrangements with the co-conspirators I. G. Farben, Belgian Solvay and other European manufacturers which provided for division of world markets in the sale of alkalis among the parties to the cartel. The cartel arrangements allocated the Continent of Europe to I. G. Farben and Belgian Solvay as their exclusive territory and they agreed not to export alkalis outside of the Continent of Europe. Prior to 1936, American Potash and Chemical Corporation, West End Chemical Company, and Pacific Alkali Company, producers of alkalis in California, were exporting such alkalis to Scandinavian countries which had been exclusively allocated to I. G. Farben, and to other countries in the Continent of Europe. Because of this competition I. G. Farben threatened to repudiate its cartel arrangements and to undertake the export of alkalis to all countries of the world. In order to prevent I. G. Farben and other European producers from abandoning the cartel arrangements and exporting alkalis to the United States and to other markets which Alkasso and ICI had allocated to each other exclusively, or to the joint territory which they had agreed to share under the quota and price-fixing arrangements hereinabove set forth, Alkasso and ICI entered into negotiations with I. G. Farben and Belgian Solvay

and, in or about 1936, concluded an agreement with them which provided:

(1) That ICI, I. G. Farben, and Belgian Solvay would refrain from exporting alkalis to the United States.

(2) That Belgian Solvay would be assigned the Continent of Europe with the exception of the Scandinavian countries, as its exclusive territory, that I. G. Farben would be assigned the Scandinavian countries as its exclusive territory, and [fol. 25] that each of the said companies would refrain from exporting alkalis from the Continent of Europe to any countries allocated to Alkasso or ICI exclusively or shared by them as joint territory under agreements between Alkasso and ICI, or to any other countries of the world except as provided in cartel agreements to which ICI, Belgian Solvay, and I. G. Farben were parties.

(3) That Alkasso and its members and ICI would refrain from exporting alkalis to the Continent of Europe except that ICI was permitted to make limited exports to that Continent.

(4) That Alkasso and its members would refrain from exporting alkalis to the British Empire except within certain limits to be agreed upon between Alkasso and ICI.

(5) That Alkasso and its members would prevent other American manufacturers from exporting alkalis to the markets allocated exclusively to ICI, Belgian Solvay, or I. G. Farben, and on their part those companies would prevent other European manufacturers from exporting alkalis to the United States or to any other country allocated exclusively to Alkasso or ICI, or shared by them as joint territory by agreements between them.

49. The aforesaid agreement set forth in the previous paragraph has continued in force and effect except to the extent its operation has been suspended by the present war.

50. To effectuate the understandings described in paragraph 48, in or about June, 1936, Alkasso, acting on behalf of itself and its members, entered into a further agreement [fol. 26] with ICI and Belgian Solvay, which agreement was evidenced by a written memorandum dated July 1, 1936,

a copy of which is attached hereto as a part hereof marked Exhibit D. The said agreement in substance provided:

(1) That Belgian Solvay was assigned the continent of Europe (excluding Russia) as its exclusive territory.

(2) That ICI was assigned the British Empire (excluding Canada), Egypt, the Levant, Iraq, and Iran as its exclusive territory.

(3) That Alkasso was assigned Canada, Mexico, Cuba, Haiti, San Domingo, the Dutch East Indies, and (effective as of July 1, 1939) the Dutch West Indies as its exclusive territory.

(4) That each of the parties would refrain from exporting alkalis into the exclusive territory of the other party (with certain exceptions as to particular sodas), and that each of the parties assumed responsibility for and agreed to include in its quota any exports of alkalis thereto from the territory allocated exclusively to it.

(5) That exports of alkalis to the countries listed below should be shared between ICI and Alkasso in the following proportions:

	ICI	*Alkasso*
China	80%	20%
Japan	65%	35%
River Plata	65%	35%
Brazil	75%	25%
Other (Principally the rest of Central and South America)	75%	25%
Bahrein Island	60%	40%

[fol. 27]. (6) That if any part should erect a factory for the manufacture of alkalis in its exclusive territory outside of the United Kingdom of Europe, such party would prevent any exports of alkalis produced in such factory to any of the territories covered by the agreement.

(7) That if any party should erect a factory for the manufacture of alkalis in the joint territories with the result that imports into such territory were no longer possible, then the other party sharing such territory would have the option either—

(a) of capital participation in the proportion of its quota in that market, or

(b) of equitable compensation on terms to be mutually agreed upon.

(8) That: "In the event of such circumstances arising either through government action or otherwise which render it impossible for any one of the parties to observe any of the portions of this agreement regarding exports, the parties undertake to meet and use their best endeavours to arrive at a modification of this agreement which will not prejudice the general position of any one of them."

(9) That each party would use its best endeavours to prevent shipments of alkalis by any persons from its exclusive markets to markets allocated exclusively to the other parties and to require such persons to adhere to the agreed quotas in the joint markets; and that in the event shipments occurred from the exclusive market of one party to the exclusive market of another, the prejudiced party [fol. 28] would be compensated by the right to ship an equivalent amount of alkalis to a joint market, and such shipment would be regarded for quota purposes as having been made by the offending party.

(10) That the agreement should be effective as of July 1, 1936, and should continue in effect until June 30, 1941, and thereafter indefinitely subject to one year's notice of termination by any party.

51. The said agreement of July 1, 1936, has remained in full force and effect up to the filing of the complaint except to the extent modified as hereinafter set forth.

52. After outbreak of the present war in 1939 shipping and supply problems led to modification of the quota arrangements between defendants Alkasso and ICI. In the Spring of 1941 meetings were held between representatives of Alkasso and its members, and representatives of the defendant ICI at Rio de Janeiro in Brazil. Further meetings were also held between representatives of Alkasso and ICI and ICI (N. Y.) in June and July 1941. As a result of such meetings and negotiations a further agreement was entered into between defendants ICI and Alkasso, the latter acting on behalf of itself and its members. This agreement was made effective as of July 1, 1941, and was to continue in effect indefinitely thereafter, and is still in full force and effect. Said agreement (hereinafter referred to as the

Agreement of July 31, 1941) is evidenced by certain minutes, a copy of which is attached hereto as a part hereof marked "Exhibit F." Said agreement provided in substance as follows:

[fol. 29] (1) That there would be no change in the exclusive markets previously allocated between the parties as above described, except by mutual consent of Alkasso and ICI.

(2) That quota for sales of alkalis in Brazil by Alkasso and its members be 30% of the sales made in that country by them and ICI, as against 70% for ICI. It was further agreed that; in the event ICI's sales in Brazil, due to inability to supply alkalis to this market, should drop below 60% of the total sold by the parties, Alkasso would supply ICI with sufficient alkalis to enable ICI to maintain a minimum quota of 60%, and, under such conditions Alkasso would receive a maximum quota of 40%.

(3) That ICI's quota of sales in the Argentine, Paraguay and Uruguay should be 60% as against 40% for Alkasso and its members. It was further agreed that in the event Alkasso's sales in these countries, due to inability to supply alkalis to these markets, should fall below 40% of the total quantity of alkalis sold by the parties therein, ICI would supply Alkasso with sufficient alkalis to enable it to maintain its minimum quota position in those markets of 40%.

(4) That the quotas for sales of alkalis by Alkasso, its members, and ICI should be on the basis of 60% for ICI in Peru as against 40% for Alkasso, and in Venezuela and Columbia 50% for ICI and 50% for Alkasso.

That as to miscellaneous other countries such as China and Central America, which had been joint territories under the Agreement of 1936 referred to in Paragraph 50, [fol. 30] ICI and Alkasso would make no attempt to establish quotas for exports to such areas but that any shipments thereto would be handled according to the past arrangements, and according to such shipping facilities and such material as should be available, except that any part of the British Empire would be handled by ICI exclusively unless it should call upon Alkasso for assistance.

53. Throughout the period of time covered by the conspiracy herein alleged each of the member companies of Alkasso, during the period of its membership as herein set forth, has participated in the negotiation of the several agreements entered into by defendant Alkasso as hereinabove described and has approved of such agreements, has accepted their benefits, and assumed the obligations thereof, and has participated in carrying them out. In order to insure that Alkasso's members should not exceed the quota given Alkasso by its agreements with ICI, Alkasso has from time to time allocated to each of its member companies a certain percentage of the total exports of alkalis comprising the Alkasso quota. Further to assure compliance by its members with the several agreements which Alkasso had entered into with defendants ICI and Co-conspirators Belgian Solvay and I. G. Farben, Alkasso has utilized and, until 1940, maintained in effect with all its members their membership agreements which provided that such members would conduct all of their export trade in alkalis exclusively through Alkasso or subject to its express consent. In 1940 Alkasso revised such membership agreement and eliminated therefrom the formal requirement that members effect export sales only through it or with its consent, but the understanding has continued in effect between [fol. 31] the parties to the date of the filing of this complaint that the member companies should export alkalis only in the quantities, at the prices, through the agency outlets, and to the countries permitted by Alkasso.

Alkasso's Control Over Exports By Its Domestic Competitors

54. At the time of the negotiations between Alkasso and ICI with Belgian Solvay and I. G. Farben in 1935 and 1936, as hereinabove alleged in Paragraph 48, three manufacturers of alkalis located on the West Coast, American Potash & Chemical Corporation, West End Chemical Co. (Inc.), and Pacific Alkali Co. (Ltd.), were engaged in exporting alkalis independently of Alkasso. Some exports were made by these companies to territory allocated exclusively to ICI, I. G. Farben, and Belgian Solvay. Such companies were also exporting the alkalis to so-called joint territories of Alkasso and ICI and to territory allocated exclusively to Alkasso and its members and were competing with them for the sale of alkalis in such markets.

55. As part of the conspiracy herein alleged and to effectuate the purposes thereof, in order to eliminate competition from the aforesaid Pacific Coast companies, and as a means to bring about the agreement with ICI, I. G. Farben, and Belgian Solvay described in Paragraph 48 above, and in order to carry out its obligations thereunder, Alkasso caused the three Pacific Coast companies to organize defendant Calkex. Upon its formation Calkex, acting on behalf of itself and its members, entered into an understanding with Alkasso, acting on behalf of itself and its members, whereby Calkex and its members agreed [fol. 32] to conduct their exports of alkalis from the United States only in accordance with the agreements entered into between Alkasso and ICI, and between Alkasso, ICI, I. G. Farben, and Belgian Solvay. As apart of this understanding Calkex and its members agreed to refrain from exporting alkalis from the United States to any market allocated exclusively to ICI, Belgian Solvay, or I. G. Farben. Furthermore, Alkasso and Calkex agreed that the quotas allocated to Alkasso in the so-called joint territory by Alkasso's agreements with ICI should constitute a joint quota for both Calkex and Alkasso, and that Calkex would be given a certain proportion of Alkasso's quota in such joint markets.

56. In order to carry out the understanding thus reached by Alkasso and Calkex, they, on behalf of themselves and their members, entered into an agreement evidenced by a memorandum attached to a letter from Calkex and Alkasso dated December 2, 1937, a copy of which is attached hereto as a part hereof marked Exhibit E. The said agreement provided:

(1) That, except as below stated, Calkex and its members would confine their exports of alkalis to Latin America, Java, China, Japan, The West Indies, and western Canada.

(2) That in the year 1938 Calkex would, in addition, be allowed to export 100 tons of alkalis to New Zealand.

(3) That in addition Calkex should be allowed to export the following quantities of Alkalis to India during the following years: 4,000 long tons in 1938; 2,000 long tons in [fol. 33] 1939; and 1,000 long tons in 1940. It was agreed that the alkalis so exported to India by Calkex should be sold by it exclusively to the subsidiary of ICI in India.

(4) That miscellaneous sales of alkalis made by Calkex in The West Indies and certain other Latin American markets independently of Alkasso should be at prices fixed by Alkasso and ICI.

(5) That, with minor exceptions and except in ICI territory where ICI should act as agent, the exports of alkalis by Calkex and its members should be handled exclusively through agents of Alkasso. Independent sales by Calkex were permitted in Cuba during the first half of 1938; temporarily in Rio de Janeiro and Santos in Brazil; and during the first half of 1938 and to the extent of 1,000 tons in Argentina. Means of handling exports to China were left for adjustment.

(6) That Calkex and its members should be permitted to export under certain quotas to certain countries according to the following tentative distribution of tonnage which was made subject to revision.

Argentina	2,000 tons
Brazil	2,000 "
Peru and Chile	400 "
Mexico	3,000 "
Canada	400 "
Japan	1,500 "
Java	2,000 "
India	4,000 "
Total	15,300 "

(7) That the agreement should continue in effect indefinitely subject to cancellation upon 60 days notice by Alkasso or Calkex.

[fol. 34] 57. The aforesaid agreement beeween Calkex and Alkasso has remained in full force and effect to the date of the filing of this complaint.

58. To carry out the foregoing understanding between Alkasso, Calkex, and their members described in Paragraph 55, and the agreement between them described in Paragraph 56, Calkex and its members have agreed among themselves that they would export alkalis only through Calkex or subject to its direction and consent. This agreement has remained in full force and effect to the data of the filing of this complaint.

59. As part of the conspiracy herein and to effectuate the purposes thereof, Alkasso, Calkex, ICI, and the remaining defendants named herein, have cooperated with each other to eliminate competition in export markets from manufacturers of alkalis in the United States who are nonmembers of Alkasso and Calkex, and from independent exporters of alkalis purchasing such commodities either from members of Alkasso or Calkex or from customers of such members or from such independent manufacturers. The foreign agencies or representatives of Alkasso and ICI have furnished their respective principals with detailed reports made up from information gathered from port agents, shipping companies and shipping documents, relating to the quantities and prices of alkalis shipped into their respective territories by such independent manufacturers and exporters, the names of vessels in which transported, the names of shippers, receiving agents, and, where known, the names of the consignees and the sales prices. Alkasso has also required its members to report to it the names of all independent exporters who sought to purchase alkali [fol. 35] products for export and such inquiries have been systematically referred to Alkasso and Calkex by their respective members. Alkasso and ICI, acting through ICI (N. Y.), have kept each other fully informed as to the activities in export markets of such independent manufacturers and exporters.

60. Whenever Alkasso and ICI have ascertained that such independent manufacturers were exporting alkalis in the various world markets, Alkasso and ICI have taken concerted action as part of the conspiracy herein alleged to eliminate competition from such independent manufacturers. By agreement with each other, defendants have in cases of such competition temporarily depressed the prices of alkalis in such export markets of such a level as to make it unprofitable for such independent manufacturers to export thereto. Alkasso has offered to act as the agent to handle the exports of such independent manufacturers or to purchase all of their alkalis to be exported, and has from time to time reached agreements with such independent manufacturers. Most of such manufacturers have been induced by such methods to accept such offers by Alkasso. By the acts aforesaid Alkasso has succeeded in gaining control of most of the export trade of such independent do-

mestic manufacturers and has thus succeeded in eliminating competition from such source in the export markets of the world and has prevented exports by such manufacturers into exclusive territories allocated as above described or into joint territories except under the quotas and at the prices agreed between Alkasso and ICI as above set forth.

61. The principal obstacle which Alkasso has encountered in achieving complete control of exports of alkalis from the United States has been sales of alkalis made by independent [fol. 36] dealers or exporters who have purchased their supplies either from members of Alkasso or of Calkex or from customers of such members, or from independent manufacturers located in the United States. In some instances such independent dealers have not observed and maintained the prices, quota arrangements, and territorial allocations agreed upon by Alkasso with the other defendants and co-conspirators herein. Said defendants and co-conspirators have designated and referred to such non-cooperating independent exporters as "bootleggers." Alkasso, its officers, agents, and sales representatives located in foreign markets, as part of the conspiracy alleged herein and to effectuate the purposes thereof, have investigated and policed the sales of alkalis made by such independent exporters in foreign markets. Whenever Alkasso and Calkex have determined that such independent exporters were securing their alkalis for export from members of Alkasso or Calkex, they required such members to refrain from selling alkalis to such exporters. Such members have usually thereafter refused to supply alkalis to such exporters. When such independent exporters have obtained material from customers of members of Alkasso and Calkex, their respective members have notified such customers they would refuse to supply them with alkalis if they continued to sell to such independent exporters, and such customers have discontinued such sales because of such threats. Alkasso also has instructed its agents in foreign markets to contact the foreign customers of such independent exporters, to offer to sell them alkalis at prices cheaper than those quoted by such independent exporters, and to disparage the quality of the products offered by such independent exporters. These instructions have been carried out, and such independent exporters have been deprived of their foreign customers. By the acts above alleged de-

[fol. 37] fendants Alkasso, Calkex, and their members, with the assistance of defendants ICI and ICI (N. Y.) have either driven such independent exporters out of business or compelled them to comply with the territorial, quota, and price arrangements hereinabove described. After the competition of such independent operators had been eliminated by such fighting methods, Alkasso and Calkex would thereafter charge such foreign customers the established prices and terms agreed upon by the defendants for such markets.

Stabilization of Domestic Prices

62. As part of the conspiracy herein alleged, the defendants have cooperated and are now cooperating with each other in order artificially and intentionally to enhance and stabilize the price at which caustic soda is sold to dealers and consumers in the United States by manufacturers located therein. As hereinabove alleged Alkasso caused ICI and other European manufacturers to withdraw and refrain from exporting alkalis to the United States. The withdrawal and continued suppression of such exports has eliminated competition from the foreign manufacturers of alkalis and has continuously assisted the defendants in carrying out their program of price stabilization. Throughout the period of time covered by the conspiracy herein alleged, caustic soda has been sold on the open market in the United States by the manufacturers thereof at uniform and stable price levels. As hereinabove alleged, caustic soda is made by the ammonia-soda process and by the electrolytic process. By the electrolytic process caustic soda is produced together with chlorine. Because of the large and growing demand for chlorine, manufacturers of that commodity operating the electrolytic process necessarily have [fol. 38] to make large quantities of caustic soda. The resulting increased supply thereof has threatened substantial reduction in and disruption of the stable price levels at which caustic soda has been sold in the United States. For the purpose of stabilizing the price of such commodity in the United States, Alkasso, Calkex, and their members, acting in concert, have adopted a policy designed to remove from the American market this additional supply of caustic soda produced electrolytically in the manufacture of chlorine and to dispose thereof in foreign markets by all possible means and in preference to other alkalis. The said defend-

ants have carried out and are now carrying out, such policy systematically by means of the agreements between Alkasso and ICI hereinabove set forth and by their practices thereunder. Defendant Alkasso, in negotiating the agreement with ICI and Belgian Solvay described in Paragraph 50 above, insisted upon and obtained a quota sufficient to permit removal from the United States markets of the then increasing amounts of caustic soda produced by the electrolytic process. Defendants Alkasso, Calkex, and their members have sold such additional supplies of caustic soda at the best price obtainable under the territorial, quota, price, and other marketing arrangements made among themselves, with defendant ICI, and with the co-conspirators as hereinabove set forth, but wherever necessary they have dumped such caustic soda in foreign markets at unprofitable price levels in order to carry out their policy aforesaid. To carry out their policy they have further systematically allocated and are now allocating among themselves their respective individual export quotas in such manner as to include under such quotas and remove from the United States markets sufficient caustic soda produced electrolytically by the said members in their manufacture [fol. 39] of chlorine to stabilize the domestic price level of caustic soda. The said individual quotas have been regularly allocated upon the following basis: In the case of alkalis, whether soda ash, caustic soda, or sodium bicarbonate, produced by the ammonia-soda process, individual quotas have been based on the relative proportions of each member company's total domestic sales (at first the basis was each member's total production) of the alkali in question during the two years prior to any current year. In the case of caustic soda produced electrolytically in the production of chlorine, a member's total percentage has been fixed on the basis not only of such member's domestic sales of all caustic soda but also of such member's accumulated stocks and estimated future production of electrolytic caustic soda during the current year, for the purpose and with the effect of removing by-product caustic soda from the domestic market and disposing of it in foreign markets. Furthermore, for this purpose, member companies producing caustic soda electrolytically in the production of chlorine have been systematically given increases in their quota to include additional amounts of caustic soda so produced by such member in any current year in excess of

the estimate of production used in the first instance as the basis of such member's quota. The defendant members of Alkasso and Calkex manufacturing alkalis by the ammonia soda process have in such cases regularly accepted reduced quotas to permit such absorption and exportation of the additional supply of caustic soda resulting from the manufacture of chlorine. Likewise the member companies using both that process and also the electrolytic process have regularly accepted reductions in the amounts of caustic soda to be exported by them manufactured by the ammonia-soda process. By the methods aforesaid, the said defend- [fol. 40] ants have enhanced, stabilized, and maintained at uniform and noncompetitive levels the price of caustic soda sold in the United States.

63. The conspiracy herein alleged is still continuing and the defendants are presently carrying out said conspiracy and the several agreements and understandings hereinabove alleged. Alkasso and its members and, after its formation, Calkex and its members have refrained from exporting alkalis from the United States into territory allocated exclusively to ICI, Belgian Solvay, or I. G. Farben. ICI, Belgian Solvay, and I. G. Farben have refrained from exporting alkalis into the United States and to the other territory allocated exclusively to each other and to Alkasso and its members. Alkasso, its members, ICI, and, after its formation, Calkex and its members have also observed the quota, price, agency, and other export and marketing arrangements for the joint territories established by the several agreements hereinabove referred to in paragraphs 43 through 58. Whenever any of the companies has supplied more than its quota share in one of the joint territories, it has accepted a corresponding reduction from its quota in another joint territory in favor of the other company or has made other arrangements satisfactory to the other party to adjust the quota positions in accordance with the terms of the said agreements. The members of Alkasso have carried out their agreements with it described in paragraph 53 and in compliance therewith have accepted and abided by the individual quotas allocated to each of them from time to time for sale of alkalis in joint terirtory shared with ICI as aforesaid and in exclusive Alkasso territory, and in compliance with their said agreements with Alkasso have exported only through it or with

its consent and at the prices prescribed by it. Defendant [fol. 41] Calkex has at all times complied with its understanding and agreement with defendant Alkasso described in paragraphs 55 and 56 above and has accepted and abided by the export quotas allocated to it thereunder by Alkasso and has complied with the export marketing requirements therein provided. The members of Calkex have at all times complied with their agreement with Calkex described in paragraph 58 above and pursuant thereto have accepted and abided by the individual export quotas allocated to them by Calkex as their share of exports out of the quotas allocated to Calkex from time to time by Alkasso, and have exported only with the consent of Calkex and through the agencies, at the prices, and to the territories permitted by it under their agreement. The defendants are continuing to engage in the herein alleged unlawful combination and conspiracy in restraint of interstate and foreign trade and commerce in alkalis, and are continuing to carry out the aforesaid contracts, agreements, and understandings in restraint of such trade and commerce, all in violation of Section 1 of the Sherman Antitrust Act. None of the alleged illegal acts of the defendants are exempted from the provisions of the Sherman Antitrust Act by the provisions of the Webb Export Trade Act. Defendants will continue to engage in the said unlawful combination and conspiracy and to carry out the said illegal contracts, agreements, and understandings unless therefrom restrained by order of this Court.

VI. Effects of the Combination and Conspiracy

64. As intended by the defendants, the results of the aforesaid combination and conspiracy and the acts of the defendants in effectuation thereof, and of the contracts, [fol. 42] agreements, and understandings hereinabove described have been to restrain the foreign and domestic trade and commerce of the United States as follows:

1. Competition by Alkasso, Calkex, and their members with ICI and European producers of alkalis in the manufacture and marketing of alkalis has been eliminated throughout the markets of the world.

2. Exports of alkalis by ICI, Belgian Solvay, and I. G. Farbenindustrie to the United States and its territories and possessions have been wholly eliminated.

3. Exports of alkalis from the United States by Alkasso, Calkex, and their respective members, and other manufacturers of alkalis in the United States, to many markets of the world have been wholly eliminated.

4. Exports of alkalis from the United States by Alkasso, Calkex, and their respective members, and other manufacturers of alkalis in the United States, to many markets of the world have been curtailed and restricted by quota arrangements entered into between Alkasso and ICI for such markets.

5. Competition by Alkasso and its members with Calkex and its members in exports of alkalis from the United States, and competition with the defendants by other United States manufacturers in exports of alkalis from the United States have been eliminated.

6. The production of alkalis within the United States has been curtailed and limited.

7. The manufacturers of alkalis in the United States who were not members of Alkasso and Calkex have been [fol. 43] prevented from competing with Alkasso, Calkex, ICI, Belgian Solvay and I. G. Farbenindustrie in the various markets of the world.

8. Independent exporters of alkalis in the United States have been prevented from engaging in the export of such commodities.

9. The prices at which caustic soda is sold in the United States have been enhanced, stabilized and maintained at uniform and arbitrary price levels.

VII. Prayer

Wherefore, the plaintiff prays:

1. That the aforesaid combination and conspiracy, contracts, agreements and understandings in restraint of trade be adjudged and decreed to be unlawful, and that the contracts, agreements, understandings, and practices alleged in this complaint be adjudged and decreed to be in violation of Section 1 of the Sherman Antitrust Act.

2. That the Court adjudge and decree that the defendants have combined and conspired to restrain the foreign

and domestic trade and commerce of the United States in violation of Section 1 of the Sherman Antitrust Act.

3. That the defendants and each of them and their officers, directors, agents, representatives, and all persons and corporations, acting or claiming to act on behalf of them, be perpetually enjoined from combining or conspiring or agreeing to restrain trade and commerce in alkalis among the several states of the United States or with foreign na- [fol. 44] tions, and that they be perpetually enjoined from engaging in or participating in practices, contracts, relationships, or understandings, or claiming any rights thereunder, having the purpose or effect of continuing, reviving, or renewing any of the violations of the Sherman Antitrust Act hereinbefore in this complaint set forth and described.

4. That the agreement between defendants Alkasso, its members and ICI, hereinbefore alleged and described in paragraph 43, and the agreement, to the extent it is still in effect, between defendants Alkasso, its members, and ICI and co-conspirators I. G. Farben and Belgian Solvay hereinbefore alleged and described in paragraph 48, and the agreement between defendants Alkasso, its members, and co-conspirators ICI and Belgian Solvay hereinbefore alleged and described in paragraph 50, and the agreement between Alkasso, its members and ICI hereinbefore alleged and described in paragraph 52, and the understanding and agreement between Alkasso, Calkex, and their members hereinbefore alleged and described in paragraphs 55 and 56, be adjudged to be illegal and ordered terminated and cancelled.

5. That the defendants and each of them and their officers, directors, agents, representatives, and all persons and corporations, acting or claiming to act on behalf of them, be perpetually enjoined from carrying out, claiming any rights under, or entering into any contract, agreement or understanding with any citizen of any foreign country or any company or corporation therein situated, in any manner restricting the defendant's exports of alkalis from the United States division of export markets, allocation of territories, fixing of prices in export sales, or fixing or observing any export quotas.

[fol. 45] 6. That the defendants (other than ICI and ICI (N. Y.)) and each of them and their officers, directors,

agents, representatives, and all persons and corporations, acting or claiming to act on behalf of them, be perpetually enjoined from selling alkalis exported from the United States in any foreign markets through ICI (N. Y.) or through any agent or dealer selling alkalis for or on behalf of ICI or ICI (N. Y.).

7. That the defendants and each of them and their officers, directors, agents, representatives, and all persons and corporations, acting or claiming to act on behalf of them, be perpetually enjoined from carrying out, in concert with any foreign company or corporation or by concerted action among any defendants, any systematic reduction of prices of alkalis, exported by defendants from the United States and sold in foreign markets, for the purpose of impairing or destroying the export trade of any United States manufacturer, dealer or distributor, or to eliminate any domestic competitor.

8. That each defendant (other than ICI and ICI (N. Y.)) and the officers, directors, agents and representatives of such defendant, and all persons and corporations acting or claiming to act on behalf of such defendant, be perpetually enjoined from refusing to sell alkalis, to the extent available in the regular course of such defendant's business, to dealers or distributors ordering such commodities for export, or intending to export the same, from the United States to any country not an enemy of the United States, where such dealers or distributors make appropriate payment or tender of payment at such defendant's current export prices.

[fol. 46] 9. That defendants and each of them, and their officers, directors, agents, representatives, and all persons and corporations, acting or claiming to act on behalf of them, be perpetually enjoined from investigating, gathering information relative to the activities of, circulating information concerning and reporting to each other about shipments and sales in foreign commerce by other manufacturers and by distributors and dealers of alkali products located in the United States, when the intent and purpose of such investigations and reports is to control, limit and suppress the competition of such other United States manufacturers, distributors and dealers.

10. That the defendants Alkasso and Calkex, their members and all officers and agents acting for them, be enjoined from referring to Alkasso or Calkex all inquiries and orders received from domestic distributors and dealers for alkali products to be exported from the United States and distributed and sold in foreign commerce, or from refusing to sell alkalis to any person because such person has failed to abide by quota arrangements or to observe exclusive world markets, or because such person has sold such products at prices and terms other than those established by said defendants and co-conspirators.

11. That the defendants and each of them and their officers, directors, agents, representatives, and all persons and corporations, acting or claiming to act on behalf of them, be perpetually enjoined from carrying out any plan or program for removal from United States markets, and disposal by export from the United States, of electrolytically produced caustic soda in preference to other alkalis, or from adopting or carrying out any practices or [fol. 47] measures in the export of alkalis from the United States having the purpose and effect of stabilizing the prices at which alkalis are sold in the United States.

12. That the plaintiff have such other, further and more general relief as may be necessary in the premises.

13. That, pursuant to Section 5 of the Sherman Act, an order be made and entered herein requiring such of the defendants as are not within this District to be brought before the Court in this proceeding as parties defendant and directing the marshals of the district in which they severally reside to serve summons upon them:

Herbert A. Berman, Harold L. Schilz, Patrick A. Gibson, Special Assistants to the Attorney General.

Francis Biddle, Attorney General. Wendell Berge, Assistant Attorney General. Lawrence S. Apsey, Special Assistant to the Attorney General.

[fol. 48] EXHIBIT "A" TO COMPLAINT

Notes of Meetings in New York on 27th, 28th & 29th February 1924

Present Mr. Eli Winkler, Mr. H. G. Carrel & Mr. E. B. Finch of the United States Export Alkali Association and Mr. J. G. Nicholson & T. H. Bell of Messrs. Brunner Mond & Co. Ltd.

MEXICO

It was finally agreed that the Association should forthwith appoint as their Agents in Mexico, Messrs. Wm. Young & Co. who will continue to act for B. M. & Co. Ltd. and The U. A. Co. Ltd. in exactly the same manner as heretofore. Messrs. Young would be asked to employe in some manner suitable to all parties, Mr. Roberts & Mr. Lomelin, who have previously represented the Association. A cable was sent to Messrs. Young offering them the Agency on these terms & they replied accepting same. Mr. Finch will immediately proceed to Mexico to confirm the arrangement, assist in the initial stages & in company with Messr. Young, decide what prices the market shall pay.

In consideration for the above & having regard to comparative sales made by American & British manufacturers during recent years, it was agreed for the present that the following quotas per annum of Ash & Caustic should be observed:—

		Ash	*Caustic*
British (U A Co Ltd)	40% with a maximum of	1500	3500
Americans	60 or balance say	2250	5250
Any supplies Mexico may require in excess of..... shall be supplied exclusively by the Americans.		3750 tons	8750 tons

CUBA

It was agreed that neither The United Alkali Co. Ltd. or Messrs. Brunner Mond & Co. Ltd. should quote prices or [fol. 49] ship Ash or Caustic to Cuba till further notice.

South America

It was agreed that as from the 1st January 1924 the Association should not ship annually more than Tons 6500 Caustic Soda & Tons 1000 Ash to South America & that their exports of Caustic Soda should be made at regular intervals & the quantities sent to each market must not exceed the following:—

Agents	*Market*	*Tons per annum*	*Approx per month*	*Tons shipped or in course of shipment since 1/1/24*
T. J. Williams	Argentina	3400	280	900
idem	Uruguay	400	33	130
Grace & Co	Rio de Janeiro	2400	240	150 to Grace
Matarazzo	Santos for Sao Paulo			
idem	Pernambuco	100	8	30
idem	Bahia	200	8	89
	West Coast & other ports	nil	"	"
		6500		

The 1000 Tons Soda Ash may be shipped as convenient to any of the above markets. The Association agree that any shipments of Caustic Soda or Soda Ash that may be made by U. S. A. manufacturers outside the Association to South American ports shall, on proof of such shipments, be included in the Association quota & deducted from the tonnage of the market affected.

The Agents of Messrs. B. M. & Co. Ltd. & The U. A. C. Ltd. will be advised to make room for the annual tonnage of U. S. A. Caustic Soda corresponding to their respective markets. All Agents throughout S. America will be instructed to raise their selling prices on Caustic as soon as circumstances permit to a flat rate of say £18-10-0 per ton [fol. 50] C. I. F. any port which at exchange dollars 4.30 equals $80.00 per ton—Small drums 30/—extra.

As the Agents of the Association should experience no difficulty in placing their allotted tonnage of Caustic at the ports under their control their principals are instructing them to follow the prices of the Agents of B. M. & Co. Ltd. and the U. A. Co. Ltd.—This likewise applies to Ash.

In case of competition from outside European or American sources, cables will be exchanged between B. M. & Co. Ltd. Buenos Aires & The Association in New York.

The price finally agreed at which British & Association Caustic Soda shall be sold to Matarazzo & Co. Santos for Sao Paulo is as follows:—

	Davidson Pullens British Prices	*Grace's & Association Prices*	*Terms Payment-level*	*Agreed-maximum Tonnage per annum* British	U S A
To Matarazzo	£17-10-0	Equivalent of British	Net Cash 30 days after arrival steamer	1000	1500
To Dealers minimum	£18-7-6	do	usual local	no limit	1000 for Grace
To general trade minimum	£18-10-0	do	do	no limit	
					2500 Tons

Matarazzo & Co. is not to receive more than a total of tons 2500 from all sources per annum. Advice is being given accordingly to Messrs. Davidson Pullen & Co., Messrs. Matarazzo & Co., and Messrs. Grace & Co. & Mr. Olsburgh (UACo).

By Tons it means 2240 lbs., 1016 Kilos or long Tons.

New York,
29th February 1924.

[fol. 51] EXHIBIT "B" TO COMPLAINT

Copy

IMPERIAL CHEMICAL INDUSTRIES LTD.

Imperial Chemical House, Millbank, Westminister, S. W. 1

22nd October, 1929

The United States Alkali Export Association

New York.

DEAR SIRS:

This letter is for the purpose of confirming the results of our conversations with Mr. Finch regarding joint exports of alkali products as 58%.

It is understood and agreed that under the proposed arrangement, commencing on the 1st January, 1930, we include Magadi shipments in our tonnage.

The U. S. A. share of the joint exports of all alkali products from the U. S. A. and from the United Kingdom—excluding our shipments to the Irish Free State—shall be for the year:

1930	22½%
1931	24%
1932	25%

It is understood there will be complete co-operation between us in order to avoid competition in any part of the [fol. 52] world, and we confidently expect therefore that, apart from your responsibility for the tonnage of U. S. A. exports, you will take the necessary steps to control Inyo and any other makers of alkali products in the U. S. A., so that by the stabilization of prices we may achieve some benefit from our arrangement with you.

We shall continue, of course, to exchange with you each quarter statistics of shipments from the U. S. A. and from this country, so that we may consider how it will be possible to adjust shipments in order that you may attain the agreed U. S. A. export quota.

Further, we should like to put on record that, while there is no agreement after the end of 1932 and Mr. Finch has made no commitments on your behalf after that date, we have during our discussions expressed very strongly our view that a continuance of friendly co-ordination on the above basis is only possible provided that the recent steady increase in your percentage should not continue thereafter and that, when you have reached 25%, you should be prepared to continue co-operation with us on that basis for a further period of years.

Yours faithfully, Signed: J. G. Nicholson.

	ICI	*Alkasso*		
1927	18.18% (1)	1929—21.6% (1)		1—excludes Mag
	16.2 % (2)			2—Includes "
1928	22.01% (1)			
	18.08% (2)			

[fol. 53] EXHIBIT "C" TO COMPLAINT

AGREEMENT BETWEEN ALKASSO AND I. C. I.

1. Three years from May 1, 1933 to April 30, 1936, and to continue thereafter unless terminated by six months' notice by either party.

2. The markets of the world shall be apportioned as follows. Of the total joint deliveries:

	Alkasso		*I. C. I.*	
Mexico	80%		20%	with maximum 5000 T.
China	7%	with maximum 4000 T	93%	
India	3%	with maximum 2000 T	97%	

3. Routine shipments from England to Continental areas to continue to be included in world figures, but any shipments to such markets which might be dictated by trade reciprocity or inter-European arrangements of I. C. C. to be considered outside of the world tonnage total, although to be reported for purposes of record.

4. In all all other markets not specially mentioned Alkasso and I. C. I. shall sell at agreed prices (where possible to be agreed locally from time to time). In case of dispute the party with the major interest in the market to decide.

5. The I. C. I. undertake that shipments by the Magadi Soda Company shall not exceed the proportions to each market shipped by the M. S. Coy, under the Magadi-I. C. I. sales agreement.

6. Figures showing total shipments to each market by both parties (excluding Magadi) shall be exchanged quar- [fol. 54] terly and including the above mentioned quotas shall be divided as follows:

Alkasso	*I. C. I.*
25%	75%

7. The I. C. I. shall give Alkasso delivery instrutcions for 5,000 tons during the three years period at any time suitable

to market requirements in order to liquidate all over-delivery at Dec. 31, 1932. Such shipments shall not be calculated as part of Alkasso's quota under this agreement.

8. Although the agreement is dated from May 1st the actual provisions as to quotas shall date from Jan. 1, 1933.

9. In addition to the shipment figures for quota purposes similar statements shall be prepared by both parties based on actual sales in each market.

10. Mexico	To be sold by joint agent.
China	To be sold by I. C. I. China, Ltd.
India	To be sold by Alkasso agent and I. C. I. India, Ltd. in agreement as to prices.

11. In view of the elimination of Magadi shipments from the joint tonnage, Alkasso are not responsible if there is any resumption of shipments of Natural Soda from western ports of U. S. A. inasmuch as there are no material exports at present and Alkasso express the opinion that there are not likely to be any.

(Meetings of 5/8 and 5/9/33 at Uptown Club, 60 East 42nd St., N. Y. City. Nicholson, Wallace, White for I. C. I., Kienle, Taylor, Hooker, Winkler, Chadwick, Finch for Association.)

[fol. 55] EXHIBIT "D" TO COMPLAINT

ALKASSO-BRITISH AGREEMENT

July 1, 1936

(1) The parties to the agreement are I. C. I., Solvay and Alkasso, and meetings between representatives of the parties shall be held annually alternately in Europe and the U. S. A.

(2) This agreement commences on July 1st 1936 and runs until June 30th 1941. On or after June 30th 1940 one year's notice of termination may be given by any of the parties.

(3) Exclusive territories as follow are allotted to the parties. Each party assumes responsibility for and will count in its quota any exports from its exclusive territory.

Exclusive territories:

Solvay—Continent of Europe (excluding Russia).

I. C. I.—British Empire (excluding Canada). Egypt and Levant. Irak and Iran.

Alkasso—Canada, Mexico, Cuba, Haiti, and San Domingo, Dutch East Indies, Dutch West Indies (Effective 1/1/39).

[fol. 56] (4) It will not be considered a breach of clause). Effective 1/1/39.

3. If modified Sodas sold under proprietary brand name be shipped each year to exclusive territories in quantities not exceeding the average annual shipment made to each individual market over the period 1933-1935 inclusive.

(5) Joint territories as follow will be shared by I. C. I. and Alkasso in the proportions shown.

	I. C. I.	*Alkasso*
China	80	20
Japan	65	35
River Plate	65	35
Brazil	75	25
Other (principally Rest of S. America	75	25
(Effective 1/1/39)		
Central America	[—]*	[—]*
[—]*		
Bahrein Island	60	40
(Retroactive to 7/1/36)		

(Jan. 21, 1938) "60% : 40% division still stands for any tonnages shipped in excess of the 1933/35 average."

It shall not be considered a breach of this clause if Solvay ship to colonies or protectorates of European countries in which they have factories provided the quantities do not exceed the average annual shipments during the period 1933/35.

In the case of China, Japan, River Plate and Brazil these percentages shall hold provided that the joint shipments in any one year to the respective markets do not exceed the

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*Struck out in copy.

[fol. 57] average shipments for the triennial period 1933, 1934, 1935.

These figures are agreed to be:

China	50,955 tons	as 58%
Japan	55,033 "	" "
River Plate	42,426 "	" "
Brazil	43,396 "	" "

If, however, the joint shipments in any future contractual year to any one of these markets shall exceed the triennial average shown above, the excess over the average shall be divided 60% to I.C.I. 40% to Alkasso.

(6) Each party shall use its best endeavours to prevent shipments from its exclusive market to markets exclusive to other parties and to adhere to the agreed quotas in the joint markets.

(7) In the event of leakage to an exclusive market, compensation will normally be made by arranging shipment to a joint market, such shipment to be regarded for quota purposes as having been made by the offending party.

(8) In the joint markets the position will be reviewed at the end of each contractual year, and the over and under deliveries will be carried over into the succeeding year. The over delivered party will make every endeavour to reduce his shipments so as to correct the quota position.

(9) If for any reason one party declines its share of business in a joint market, then the other party shall have the right to supply without penalty.

[fol. 58] (10) The three parties agree to consult before entering into any arrangement regarding alkali exports from Japan.

In the event of any arrangement being made with the Japanese producers, such arrangement shall as far as possible be on a territorial basis and exclusive territories shall be respected.

(11) In the event of either of the parties erecting an alkali works in its exclusive territory outside the U.K. or Europe, no exports to be permitted from such works to territory covered by this agreement.

(12) In the event of either of the parties erecting an alkali works in the joint territories with the result that imports are no longer possible, then the other party shall have the option either—

(a) of capital participation in the proportion of its quota in that market, or

(b) of equitable compensation on terms to be mutually agreed.

If the parties fail to agree on an arrangement satisfactory to both, either shall have the right to give one year's notice of termination of this agreement.

(13) In the event of such circumstances arising either through government action or otherwise which render it impossible for any one of the parties to observe any of the portions of this agreement regarding exports, the parties undertake to meet and use their best endeavours to arrive at a modification of this agreement which will not prejudice the general position of any one of them.

June 11th, 1936. New York, N. Y.

[fol. 59] EXHIBIT "E" TO COMPLAINT

California Alkali Export Association, 1206 Pacific Mutual Bldg., Los Angeles, California

December 2, 1937.

United States Alkali Export Assoc., Inc., 11 Broadway, New York, N. Y.

Atten.: Mr. E. V. Finch

GENTLEMEN:

This will confirm recent conversations with respect to a cooperative export program as between the California Alkali Export Association and the United States Alkali Export Association which has been outlined in accordance with memorandum attached hereto.

Very truly yours, California Alkali Export Association, By D. B. Scott, President.

DBS:M.
Encl.

[fol. 60] 1. Markets

It is understood and agreed that the Association's exports of soda ash will be confined to all Latin American markets; also Java, China, Japan, the West Indies and Western Canada. New Zealand will remain as an exception during the first half of 1938 when the maximum amount of ash shipped to that market will be 100 tons.

In India this Association has the privilege of shipping 4,000 long tons during 1938, 2,000 long tons during 1939, and 1,000 long tons during 1940. It is understood and agreed that the sale of this material will be made direct to Imperial Chemical Industries, Ltd., of India; this company, for their own account, will pay the local Association agent in India his regular agent's commission. During the life of these shipments or for such time as may be determined by this Association, orders for Indian tonnage will be transmitted from London via New York to the Association and the United States Alkali Export Association will give routine attention to all essential details appertaining to this special business, etc., etc.

The Association agent in India will have authority to act as liaison officer in Association relations with the Indian British Company particularly with respect to price levels and any other details which might be required of him.

2. West Indies and Central America

Miscellaneous small sales effected in this area independently of the Association but in co-operation with New York will be in accordance with established price schedules maintained between New York and London. This applies [fol. 61] specifically to those small areas where United States Alkali Export Association does not maintain agencies.

3. Agencies

Foreign agents of the United States Alkali Export Association will be utilized exclusively in the distribution of export sales. The following exceptions will prevail:

Independent sales will continue in Cuba during the first half of 1938.

Independent sales will continue temporarily through Association agents in Rio de Janeiro and Santos, Brazil, until

developments permit of distribution solely via United States Alkali Export Association agents.

Independent sales to the Argentine, in the amount of 1,000 tons, will be made during the first six months of 1938 only, after which subsequent sales will be made through the agents of United States Alkali Export Association.

With respect to China, as the present situation does not permit of any form of definite agency distribution, no commitment is made as to any Association sales policy in that market, it being understood this angle will be adjusted satisfactorily when conditions permit.

4. Credits

All United States Alkali Export Association agents will assume full and complete obligations under del credere. This also applies to the British Company in India or other [fol. 62] British overseas company which might be utilized at any time.

5. Freight Rates

The United States Alkali Export Association will continue, on behalf of all concerned, its past policy of maintaining minimum ocean rates to all foreign markets, cooperating in every respect with this Association.

6. Distribution

The following tentative distribution of tonnage by markets is reported as a preliminary matter of record and it is understood will be subject to any necessary revision:

Argentine	2,000 tons
Brazil	2,000 "
Peru and Chile	400 "
Mexico	3,000 "
Canada	400 "
Japan	1,500 "
Java	2,000 "
India	4,000 "
Total	15,300 "

7. Japan

The Association recognizes the strategic policy as established between New York and London in combating

shipment of both caustic and ash to the Japanese market. Under this formal recognition, it has subscribed to 1,500 tons of ash during 1938 for that month.

The provision of this memorandum will continue in effect until notification of cancellation be given by either party sixty days prior to effect cancellation date.

[Vol. 63] EXHIBIT "F" TO COMPLAINT

United States Alkali Export Association, Inc.

11 Broadway

New York, N. Y.

The Ninety Ninth Meeting of the Executive Committee of United States Alkali Export Association, Inc., was held at the Hotel Barclay, 111 East 48th Street, Borough of Manhattan, New York City, July 31st, 1941, at 10:30 A. M.

Present:

On behalf of the Association:

Messrs. J. A. Kienle, Chairman; G. S. Cooper, Eli Winkler,

also E. V. Finch, President of the Association.

On behalf of Imperial Chemical Industries Ltd.:
Messrs. Lincoln Steel, J. W. Gibb, E. J. Barnsley.

Tonnage for Latin American Markets: Export Quotas:

Meeting was convened to give further consideration to the Latin American situation as covered by certain agreements of the Committee in meeting held two days before, i.e., Tuesday, July 29th, 1941.

[fol. 64] Mr. Steel stated that previous arrangements were nullified by London cable advices of July 30th to the effect that the British Government had relaxed existing shipping restrictions—consequently I.C.I. were free to ship full requirements to agents in River Plate markets (Argentina, etc.), a majority of agents' requirements in Brazil, and total requirements in Bolivia. Further, depending upon shipping conditions, shipments would move to China agents

in nominal quantities, but not sufficiently to meet full requirements. While not on the agenda of the previous meeting, Mr. Steel advised that reasonable shipments would be permitted to Canada by the British Government in the event material should be required.

In view of the foregoing, it was agreed that arrangements set up at the previous conference, held July 29th, 1941, would be considered as cancelled, although they could serve as a basis for any renewed discussions or exchanges in the event past permit restrictions by British Government might be re-imposed.

New Quota Arrangements:

Brazil:

It was agreed, effective July 1st, 1941, Brazilian quota would be 70% for I.C.I., and 30% for Alkasso on the basis of sales made, (not shipments)—further, in the event I.C.I. sales, due to inability to secure material, should drop below 60% of the market, the Association would supply I.C.I. agents with sufficient tonnage to enable them to maintain a minimum quota position in sales of 60% versus the original 70%. Under such conditions, the Association would receive a maximum of 40%.

[fol. 65] River Plate:

It is agreed, effective July 1st, 1941, River Plate quota would be 60% for I.C.I. and 40% for Alkasso on the basis of sales made, (not shipments)—further, in the event Alkasso sales, due to shortage of material, should drop below 40% of the market, I.C.I. would supply the Association agents with sufficient tonnage to enable them to maintain a minimum quota position in sales of 40%.

Peru:

It was agreed, effective July 1st, 1941, quota division in Peru would be 60% for I.C.I. and 40% for Alkasso.

Venezuela and Colombia:

It was agreed, effective July 1st, 1941, quota position in both Venezuela and Colombia would be 50% for I.C.I. and 50% for Alkasso.

Miscellaneous Markets—China, Central America, Panama, The West Indies, etc.:

It was agreed no attempt could be made to establish quotas in such areas, and any business involved would be handled according to past practice, shipping facilities and material available, except British Empire markets: the latter to be handled by I.C.I. unless they should call upon Alkasso for any assistance.

India:

Notwithstanding the termination of the old I.C.I.-Alkasso agreement June 30th last, and the consequent termination [fol. 66] of any obligation by I.C.I. to supply material to National Aniline & Chemical Co. in India, (former agents for Alkasso), Mr. Steel stated his full agreement to recommend that I.C.I. in India continue to furnish material as heretofore, except the volume would have to be on a prorated basis because the British Government had restricted I.C.I. shipments, thereby creating a proportionate rationing of tonnage in all British Empire markets. No definite figure could be set down, but Mr. Steel expressed the belief that whatever reduction was made in the original amount of 2,500 tons as 58% would be necessarily proportionate and therefore quite fair. (I.C.I. India are continuing to furnish NACCO with material on a reduced basis).

Iran:

The Association agreed, provided tonnage and shipping facilities permit, to supply material for Iran, via the Persian Gulf, utilizing British agents, allowing a 5% commission and receiving payment by irrevocable letter of credit at New York.

Other Quota Arrangements:

It was agreed inasmuch as all previous quota arrangements had terminated, that any tonnage overage on the part of the Association would be considered as cancelled, there remaining as of July 1st, such arrangements as are specified herein, with no change effecting exclusive markets, or such markets where Alkasso might be furnishing 100%, by selling through I.C.I. agents.

Brazil-Argentine Tonnage Exchange:

Respecting past sale of 1,500 tons of caustic by the Association to I.C.I. in Brazil at $59.00 per ton c.i.f., and [fol. 67] British agreement to sell a similar quantity on like terms to Alkasso's agent in Buenos Aires:

The British agreed to consider this matter, having no objection to a corresponding Argentine shipment, provided tonnage and shipping facilities permitted.

Shipping Information:

To enable Alkasso to more accurately gauge its tonnage position, the British officials agreed to advise by cable, the volume of shipments cleared from time to time to Brazil, Argentine, and China.

Miscellaneous:

Mr. Steel discussed the Argentine situation, explaining that Duperial and Celulosa (a local paper company), each owned 50% of Electrochlor, a selling agency with whom Duperial had contracted for the selling rights for caustic soda, chlorine, and miscellaneous products; further, that Celulosa own the cell room which is operated by an independent outfit, supplying Electrochlor with chlorine—further, chlorine capacity was about 45 tons daily, with an estimated maximum surplus of caustic soda for yearly sale of 6,000 tons—said figure contingent upon the activities and consumption of chlorine by Celulosa.

Bunge & Born Electrolytic Production:

Discussion of Bunge & Born's electrolytic production estimated at a possible 5-tons maximum daily, offered a total local production close to 8,000 tons of caustic for sale [fol. 68] yearly—this without figuring possible further expansion, concerning which details are unknown.

Williams Quimica y Tecnica, S.R.:

I.C.I. requested the Association keep them informed relative to any expansion in the electrolytic production of Williams Quimica, Association agents, at present rated around 1-ton daily, all of which is going into sodium hypochlorite.

Adjournment:

There being no further business to come before the meeting, it was, upon motion duly made and seconded, Adjourned.

——— ———, Chairman.

[fol. 69] In United States District Court

[Title omitted]

Motion to Dismiss Complaint for Lack of Jurisdiction of Subject Matter

The defendants, United States Alkali Export Association, Inc., Pittsburgh Plate Glass Company (Inc.), Church & Dwight Co., Inc., Diamond Alkali Company (Inc.), Dow Chemical Company, Inc., Hooker Electrochemical Company (Inc.), The Mathieson Alkali Works (Inc.), Niagara Alkali Co., Pennsylvania Salt Manufacturing Co., Southern Alkali Corporation, Westvaco Chlorine Products Corporation, Inc. and Wyandotte Chemicals Corporation, by their respective undersigned attorneys, hereby move, pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, to dismiss the complaint in the above-entitled action upon the ground that this Court does not have jurisdiction of the [fol. 70] subject matter thereof because, under the provisions of Title 15, Sections 62 and 65, of the United States Code, exclusive jurisdiction is vested, in the first instance, in the Federal Trade Commission of the matters complained of in the complaint herein, and for such other and further relief as the Court may deem just and proper.

Dated, April 26, 1944.

Cravath, Swaine & Moore, by Wm. Dwight Whitney, a Member of the Firm, Attorneys for Defendant, United States Alkali Export Association, Inc., 15 Broad Street, New York 5, N. Y. Leland Hazard, Attorney for Defendants, Pittsburgh Plate Glass Company (Inc.) and Southern Alkali Corporation, Grant Building, Pittsburgh, Pa. Reed, Smith, Shaw & McClay, Attorneys for Defendant, Diamond Alkali Company (Inc.), Union Trust Building, Pittsburgh, Pa. Calvin A. Campbell, Attorney for Defendant, Dow Chemical Company, Inc., Midland, Michigan. Robert T. McCracken, Attor-

ney for Defendant, Pennsylvania Salt Manufacturing Co., 1421 Chestnut Street, Philadelphia, Pa. [fol. 71] Lewis & Watkins, Attorneys for Defendant, Wyandotte Chemicals Corporation, Ford Building, Detroit, Michigan. Wm. Dwight Whitney, Attorney and of Counsel for Defendants, Pittsburgh Plate Glass Company (Inc.); Southern Alkali Corporation; Diamond Alkali Company (Inc.); Dow Chemical Company, Inc.; Pennsylvania Salt Manufacturing Co.; and Wyandotte Chemicals Corporation, 15 Broad Street, New York, N. Y. Dwight, Harris, Koegel & Caskey, by Ralph S. Harris, a Member of the Firm, Attorneys for Defendant, Church & Dwight Co., Inc., 100 Broadway, New York, N. Y. Sage, Gray, Todd & Sims, by Wm. E. Sims, a Member of the Firm, Attorneys for Defendant, Hooker Electrochemical Company (Inc.), 49 Wall Street, New York, N. Y. Chadbourne, Wallace, Parke & Whiteside, by Horace G. Hitchcock, a Member of the Firm, Attorneys for Defendant, The Mathieson Alkali Works (Inc.), 25 Broadway, New York, N. Y. Root, Clark, Buckner & Ballantine, by John E. F. Wood, a Member of the Firm, Attorneys for Defendant, Niagara Alkali Co., 31 Nassau Street, New York, N. Y. Wise, Corlett & Canfield, by Byrd D. Wise, a Member of the Firm, Attorneys for Defendant, Westvaco Chlorine Products Corporation, Inc., 122 East 42nd Street, New York, N. Y.

[fol. 72] In United States District Court

[Title omitted]

Order Approving Stipulation—May 27, 1944

Upon consideration of the stipulation between counsel for plaintiff and counsel for defendants, California Alkali Export Association, West End Chemical Co. (Inc.) and Pacific Alkali Co. (Ltd.), attached hereto, and of the motion to dismiss dated April 26, 1944 and filed herein April 26, 1944 it is

Ordered that said stipulation be and hereby is approved and that the time of California Alkali Export Association,

West End Chemical Co. (Inc.) and Pacific Alkali Co. (Ltd.), defendants herein, to answer, plead or otherwise move with respect to the complaint herein is hereby extended to and including the 30th day after the entry of an order upon the aforesaid motion to dismiss.

Coxe, United States District Judge.

Dated: New York, N. Y., May 27, 1944.

[fol. 73] In United States District Court

[Title omitted]

Stipulation re extension of Time to File Answers etc.

It is hereby stipulated by and between plaintiff and defendants California Alkali Export Association, West End Chemical Co. (Inc.) and Pacific Alkali Co. (Ltd.), by their respective undersigned counsel, that it shall be assumed that said defendants have filed herein a motion to dismiss the above entitled action upon grounds identical with those set forth in the motion to dismiss dated April 26, 1944 and filed herein on April 26, 1944, by United States Alkali Export Association, Inc., Pittsburgh Plate Glass Company (Inc.), Church & Dwight Co., Inc., Diamond Alkali Company (Inc.), Dow Chemical Company, Inc., Hooker Electrochemical Company (Inc.), The Mathieson Alkali Works (Inc.), Niagara Alkali Co. Pennsylvania Salt Manufacturing Co., Southern Alkali Corporation, Westvaco Chlorine Products Corporation, Inc., and Wyandotte Chemicals [fol. 74] Corporation, and that any determination made or any order entered by the Court on said motion shall extend and apply to said defendants, California Alkali Export Association, West End Chemical Co. (Inc.) and the Pacific Alkali Co. (Ltd.), with the same force and effect as if they had been parties to said motion or had actually filed such a motion in their own behalf.

It is further stipulated that the time of said defendants, California Alkali Export Association, West End Chemical Co. (Inc.) and Pacific Alkali Co. (Ltd.), to answer, plead or otherwise move with respect to the complaint herein shall be extended to and including the 30th day after the entry

of an order on said motion to dismiss, and that an order may be entered herein to that effect.

Herbert A. Berman, Special Assistant to the Attorney General. Willard P. Scott, Attorney for Defendants California Alkali Export Association, West End Chemical Co. (Inc.), Pacific Alkali Co. (Ltd.)

Dated: New York, N. Y., May 26th 1944.

[fol. 75] In United States District Court, Southern District of New York

Civ. 24-464

United States of America, Plaintiff,

against

United States Alkali Export Association, Inc., et als, Defendants

Appearances:

Herbert A. Berman and Manuel M. Gorman, Esqrs., Special Assistants to the Attorney General;

Aute L. Carr, Bert C. Dedman, Esqrs., Special Attorneys;

Wendell Berge, Assistant Attorney General, of Counsel; Attorneys for Plaintiff.

Appearances for respective moving defendants same as on motion to dismiss.

Opinion—December 26, 1944

Cone, D. J.:

This is a motion by a number of the defendants to dismiss the complaint for lack of jurisdiction over the subject matter of the action.

The action is for injunctive relief for alleged violation of Section 1 of the Sherman Act in the sale of alkalis in interstate and foreign trade and commerce.

The defendants are: (1) two incorporated export trade associations, (2) thirteen domestic corporations, all pro-
[fol. 76] ducers of alkalis in this country and members of

one or the other of the defendant associations, and (3) a British corporation, which is the dominant producer of alkalis in Great Britain, together with its New York subsidiary. The two defendant associations have filed with the Federal Trade Commission the papers required by the Webb-Pomerene Act (Act of April 10, 1918, c. 50, 40 Stat. 516).

The sole ground of the motion is that under sections 2 and 5 of the Webb-Pomerene Act "exclusive jurisdiction is vested in the first instance in the Federal Trade Commission of the matters complained of in the complaint * * *."

The complaint charges that the defendants and four other corporations, not named as defendants but named as co-conspirators, have engaged in a combination and conspiracy to restrain interstate and foreign commerce in alkalis in violation of Section 1 of the Sherman Act. Two of the named co-conspirators are a Belgian corporation, alleged to be "the principal manufacturer of alkalis on the continent of Europe", and a German corporation, alleged to be "the most important manufacturer of alkalis in Germany". The terms of various contracts, agreements and understandings are described in considerable detail, and it is alleged that under these contracts, agreements and understandings, foreign markets in alkalis were divided and allocated, export quotas were established, foreign prices were regulated and controlled, and competition in United States markets from foreign producers was eliminated. It is also alleged that concerted action was taken to stifle competi- [fol. 77] tion in United States export trade from independent domestic manufacturers. The effects of the alleged conspiracy are stated to have been to restrain trade within the United States, to restrain the export trade of domestic competitors of the defendants, artificially and intentionally to enhance and stabilize the prices of alkalis within the United States, and substantially to lessen competition within the United States.

The Webb-Pomerene Act was enacted in 1918 to legalize associations formed for the sole purpose of engaging in export trade. Section 2 exempts from the operation of the Sherman Act "an association entered into for the sole purpose of engaging in export trade and actually engaged solely in such export trade". It also exempts "an agreement made or acts done in the course of export trade by such association." The proviso clauses of the section, how-

ever, considerably narrow the exemption so that it affords no immunity (1) when the association, agreement or act is in restraint of trade within the United States, or is in restraint of the export trade of any domestic competitor of the association, or (2) when the association enters into any agreement, understanding or conspiracy, or does any act which artificially or intentionally enhances or depresses prices within the United States, or which substantially lessens competition within the United States or otherwise restrains trade therein.

[fol. 78] Section 5 of the Act is concerned with procedure, and contains two paragraphs. The first paragraph requires export associations to file with the Federal Trade Commission verified written statements containing specified information regarding their organization and activities. The second paragraph provides a special procedure under which the Commission is authorized to conduct an investigation when it has reason to believe (1) that an association, or any agreement made or act done by it, is in restraint of trade within the United States, or in restraint of the export trade of any domestic competitor of the association, or (2) that an association has entered into any agreement, understanding, or conspiracy, or done any act which artificially or intentionally enhances or depresses prices within the United States, or which substantially lessens competition within the United States or otherwise restrains trade therein. If, after investigation, the Commission concludes that the law has been violated, it may make recommendations to the association for the readjustment of its business. If the recommendations are not followed, the Commission is to refer its findings and recommendations to the Attorney-General for such action as he may deem proper.

Clearly, Section 2 of the Webb-Pomerene Act granted no immunity to the moving defendants for such a con-[fol. 79] spiracy as charged in the complaint. And the allegations of the complaint are to be accepted as true for the purposes of the motion. But it is said that Section 5 provides a special procedure which prevents the court from taking jurisdiction of the action until after the Federal Trade Commission has conducted an investigation and referred its findings and recommendations to the Attorney General. This same argument was considered by the Supreme Court in *United States v. Borden Co.*, 308 U. S. 188, 203-206, with respect to the Capper-Volstead Act (42 Stat.

388, 7 U. S. C. A. §§ 291, 292), and it was held that the special procedure of that Act was merely an "auxiliary" procedure, and not in any way "a substitute for the provisions of the Sherman Act" (p. 206). This special procedure of the Capper-Volstead Act, with its provision for a hearing and judicial review, is far more comprehensive than that of the Webb-Pomerene Act, and the decision is controlling on the question presented by the motion. I hold, therefore, that the powers conferred on the Federal Trade Commission by Section 5 of the Webb-Pomerene Act are merely auxiliary, and do not in any way interfere with or prevent the maintenance of the present action.

The motion of the moving defendants to dismiss the complaint for lack of jurisdiction over the subject matter of the action is denied.

December 26, 1944.

(Sgd.) Alfred C. Coxe, U. S. D. J.

[fol. 80] In United States District Court, Southern District of New York

Civil No. 24-464

United States of America, Plaintiff,

against

United States Alkali Export Association, Inc., et al., Defendants

Order Denying Motion to Dismiss Complaint—Filed January 12, 1945

A motion having been made on April 26, 1944 by certain of the defendants to dismiss the complaint for lack of jurisdiction over the subject matter of the action, and an order, dated May 27, 1944, having been entered by Judge Alfred C. Coxe in effect making certain other defendants parties to said motion and extending their time to answer to and including the 30th day after the entry of an order on said motion to dismiss, and said motion having come on to be heard before Judge Coxe on May 12, 1944, and Judge Coxe

having rendered an opinion thereon on December 26, 1944, denying said motion, it is

Ordered:

(1) That the motion to dismiss the complaint for lack of jurisdiction over the subject of the action shall be and hereby is denied;

(2) That said defendant shall answer, plead or otherwise move with respect to the complaint within thirty (30) days after the entry of this order;

(3) That if within said thirty (30) days said defendants, or any of them, shall file with the Supreme Court of the United States a petition for writ of certiorari to review the [fol. 81] action of this Court in denying the aforesaid motion to dismiss, then the time provided for in (2) above shall be, and is hereby, extended to and including the 30th day after the Supreme Court of the United States acts upon said petition and, in the event that said petition is granted, said defendants may apply for a further extension of such time.

Dated: New York, New York, January 11, 1945.

Alfred C. Coxe, U. S. D. J.

[File endorsement omitted.]

[fol. 82] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 83] Supreme Court of the United States, October Term, 1944

No. 1016

Order Allowing Certiorari—Filed March 5, 1945

The petition herein for a writ of certiorari to the District Court of the United States for the Southern District of New York is granted, and the case is consolidated with California Alkali Export Association et al. vs. The United States of America, No. 1017, for argument.

Counsel are requested to discuss in their briefs and upon oral argument the question whether the order of the District Court may appropriately be reviewed at the present stage

of the proceedings by a writ of certiorari under section 262 of the Judicial Code.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 84] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1944

No. 1017

ORDER ALLOWING CERTIORARI—Filed March 5, 1945

The petition herein for a writ of certiorari to the District Court of the United States for the Southern District of New York is granted, and the case is consolidated with United States Alkali Export Association, Inc., et al. vs. The United States of America, No. 1016, for argument.

Counsel are requested to discuss in their briefs and upon oral argument the question whether the order of the District Court may appropriately be reviewed at the present stage of the proceedings by a writ of certiorari under section 262 of the Judicial Code.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on Cover: File No. 49,469, 49,470, D. C. U. S., Southern New York. Term No. 1016. United States Alkali Export Association, Inc., Pittsburgh Plate Glass Company (Inc.), Church & Dwight Co., Inc., et al., Petitioners, vs. The United States of America. No. 1017. California Alkali Export Association, West End Chemical Co. (Inc.), Pacific Alkali Co., (Ltd.), Petitioners, vs. The United States of America. Petitions for writs of certiorari and exhibit thereto. Filed March 5, 1945. Term No. 1016 O. T. 1944, 1017 O. T. 1944.